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No. 80-1010

In the Supreme Court of the United States

OCTOBER TERM, 1980

P.W. CURREY AND MRS. JAMES D. CURREY d/b/a CURREY & CURREY a/k/a CURREY, SHIELDS & CURREY, PETITIONERS

v.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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This memorandum is submitted in response to the Court's order of April 27, 1981, inviting the Solicitor General to express the views of the United States with respect to the case.

1. In the early 1950's, petitioners obtained oil and gas lease rights to certain restricted Indian lands in Stephens County, Oklahoma (Pet. App. C). The lease was approved by the Bureau of Indian Affairs (BIA) for Sophie Harrison, an enrolled member of the Choctaw Tribe, one of the Five Civilized Tribes of Oklahoma. Upon execution of the lease and posting of the required surety, the BIA turned direct supervision of the lease over to the United States Geological Survey (USGS). Thereafter, petitioners drilled three wells on the land. The wells were abandoned in the mid-1950s and

plugged in accordance with USGS requirements. The USGS approved the plugging and recommended to the BIA that petitioners' bond be released, which was done shortly thereafter (Pet. App. C).

In 1974, one of the wells began purging salt water. In 1976, after attempts to replug the well by third parties (not parties here or below) failed, a representative of respondent Oklahoma Corporation Commission inspected the site and filed a complaint against petitioners with the Corporation Commission. The complaint was later amended to include another well also found to be purging salt water. Petitioners received notice of the complaint and appeared before the Corporation Commission. In those proceedings, however, petitioners challenged the Corporation Commission's jurisdiction over oil and gas exploration activities on restricted Indian land. Their objections were overruled, and on January 10, 1978, the Commission issued its order (No. 137283) directing petitioners to replug the wells (Pet. App. A).

Petitioners appealed the order to the Supreme Court of Oklahoma contending, in part, that the Corporation Commission lacked jurisdiction over the restricted Indian lands (Pet. App. B). The Supreme Court rejected petitioners' contentions, and on June 12, 1979, it affirmed the Corporation Commission's order (Pet. App. C).[1]

2. By virtue of Section 11 of the Act of August 4, 1947, ch. 458, 61 Stat. 734, the restricted lands in question are subject to Oklahoma oil and gas conservation laws. In

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[1]By orders dated September 22, 1980, the Supreme Court of Oklahoma corrected its opinion to include the full quotation of the section of the Act of August 4, 1947, ch. 458, 61 Stat. 734, set forth on page 3, *infra*, and denied petitioners' petition for rehearing (Pet. Apps. E and F).

addition, all orders of the Corporation Commission affecting such lands are valid, once approved by the Secretary of the Interior or his duly authorized representative.[2] Section 11 provides:

> All restricted lands of the Five Civilized Tribes are hereby made subject to all oil and gas conservation laws of Oklahoma: *Provided*, That no order of the Corporation Commission affecting restricted Indian land shall be valid as to such land until submitted to and approved by the Secretary of the Interior or his duly authorized representative.

Although the Secretary of the Interior had received and acquiesced in the Corporation Commission's order of January 10, 1978, no formal approval of the order was given. However, upon learning of the oversight, the Acting Area Director of the BIA on May 7, 1981, sent a letter to the Corporation Commission approving its January 10, 1978, order (Appendix, *infra*). That action, although belated, fully satisfies the requirements of Section 11 of the Act of August 4, 1947, and, in our view, eliminates any arguable objection to the ruling below.

It may well be that, but for the Act of August 4, 1947, Oklahoma law could not reach the activities of lessees on restricted Choctaw lands—whether the obstacle be viewed as the Indian Commerce Clause, provisions of treaties with the Tribe, the special doctrine of federal preemption over Indian affairs, or the disclaimer provision in the Oklahoma Enabling Act (Act of June 16, 1906, ch. 3335, 34 Stat. 267-268), reproduced in the State Constitution. But it is no longer open to doubt that nothing prevents Congress from ceding to the State in which Indian lands are located the

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[2]The Area Director has been designated as the Secretary of the Interior's authorized representative. 25 C.F.R. 174.1. The regulations governing oil and gas leasing of restricted lands of members of the Five Civilized Tribes of Oklahoma are set forth at 25 C.F.R. 174.2 *et seq.*

whole or a part of its formerly exclusive jurisdiction and permitting the application of State law, administered by State tribunals. See, *e.g., Warren Trading Post* v. *Arizona Tax Commission*, 380 U.S. 685, 687 n.3 (1965). See also *Washington* v. *Yakima Indian Nation*, 439 U.S. 463 (1979). Here, albeit conditionally, there is an express delegation of authority to the State and the condition of federal approval for specific orders of the Corporation Commission has now been met. That is the end of the matter.[3]

In the circumstances, we suggest there is no issue that merits review by the Court.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

MAY 1981

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[3]Petitioners' reliance on 25 C.F.R. 1.4(a) to suggest that the Secretary of the Interior has precluded the application of state law to restricted Indian lands is misplaced. 25 C.F.R. 1.4(b) expressly recognizes the Secretary of the Interior's authority to apply state law where appropriate. This is such a case, since approval of the Corporation Commission's order would not undermine federal standards (see Pet. App. A para. 28), and no harm to the Indian landowner is apparent.

APPENDIX

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
MUSKOGEE AREA OFFICE
MUSKOGEE, OKLAHOMA 74401

May 7, 1981

State Corporation Commission
Conservation Division
Jim Thorpe Building
Oklahoma City, Oklahoma

Gentlemen:

Subject: Replugging of abandoned wells located on restricted properties belonging to Sophie Harrison, Choctaw 5567. Expired Lease No. 61604, covering the NW NE NW, NE NW NW; SE NW NW; SW NW NW of Section 10, T. 3 South, R. 5 West, Stephens County.

Order of the State Corporation Commission relative to replugging of abandoned wells located on certain of subject properties was entered in Case No. 137273 on January 10, 1978.

Notice of the hearing in this case was intially received by our office. A representative of this office, as well as a representative of the United States Geological Survey, were present at the hearing.

Although we consented to and accepted the Order of the State Corporation Commission of the State of Oklahoma, no formal approval was given. Therefore, this letter serves as official and formal approval of the Order of the Corporation Commission dated January 10, 1978, directing replugging abandoned wells on certain of the restricted properties described above. Approval is rendered in accordance with Section 11 of the Act of August 4, 1947 (61 Stat. 732).

Sincerely yours,

[s] [Alton R. Nordwall]
Acting Area Director

cc:

Tim Vollman
Assistant Solicitor
Division of Indian Affairs